IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 216 of 2000.

Judgement reserved on: 10.10.2007

Date of decision: 11.10.2007.

State of H.P. **…….Appellant**

Vs.

Yash Pal **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr. M.L. Chauhan, Addl. Advocate General.

For the Respondent : Mr. V.D. Khidtta, Advocate.

Kuldip Singh, Judge.

The State is in appeal against the judgment dated 13.9.1999 passed by learned Addl. Chief Judicial Magistrate, Kandaghat, Camp at Solan, District Solan in Cr. Case No.39/2 of 1997/96 acquitting Yash Pal accused in case arising out of FIR No.214 dated 20.9.1996, Police Station, Solan under Sections 279 and 338 IPC.

2. The brief facts are that on 20.9.1996 at about 4 p.m. near D.C. office, Solan while driving motorcycle No.HIA 1655 respondent hit a school going boy Ujwal Jayoti with his motorcycle and caused grievous injuries on the right leg of the said boy. On the basis of statement under Section 154 Cr.P.C. of Leela Dutt traffic

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Whether the reporters of the local papers may be allowed to see the Judgment?Yes

constable, FIR was registered against respondent and after completion of the investigation challan was put up in the Court, notice of accusation under Sections 279 and 338 IPC was put to respondent to which he pleaded not guilty and claimed trial. The prosecution examined 11 witnesses. The statement of respondent was recorded under section 313 Cr.P.C. and according to respondent he was driving the motorcycle in a normal speed. He denied rash and negligent driving of motorcycle on his part. The learned Addl. Chief Judicial Magistrate acquitted the respondent, hence appeal.

3. I have heard the learned Addl. Advocate General and Mr. V.D. Khidtta, learned counsel for the respondent and gone through the record.

4. PW-1 Leela Dutt has stated that on 20.9.1996 he was on traffic duty near D.C. office, Solan. At about 4.20 p.m. a motorcycle bearing No.1655 came from Saproon side and hit the boy who was standing near the chowk, as a result of which the boy sustained injuries on his right leg. The respondent was driving the motorcycle. His statement Ex. PW-1/A under Section 154 Cr.P.C. was recorded. In cross-examination he has stated that motorcycle came from Saproon side and was going towards Rajgarh road. He signaled the motorcyclist to go towards Rajgarh road. He has also stated that only on his signal the motorcyclist turned towards Rajgarh road. He has denied the suggestion that victim came running and struck against the motorcycle.

5. PW-2 Prem Lal has stated that he took one boy to the hospital in the Auto Rickshaw. He did not support the prosecution

and was declared hostile. In cross-examination also he has not supported the prosecution.

6. PW-3 Ujwal Jyoti has stated that on 20.9.1996 after school he was going towards his home and when he reached the middle of the road a motorcycle came from behind and hit him, as a result of which he sustained injuries in his right leg. In cross-examination he has admitted that there were other children also with him at the time of accident. He has stated that respondent accompanied him to hospital and he paid even some amount for his treatment. He denied that when constable gave the signal then motorcyclist turned towards Rajgarh road. He has stated that his statement was recorded after 5 days at his residence. He has stated that Manoj was with him at that time.

7. PW-4 Sunil Sood is a formal witness. PW-5 Amar Singh gave mechanical report Ex.PW-5/A after inspection of the motorcycle. PW-6 Dr. R.S. Yadav has stated about the treatment of Ujwal Jyoti and has proved discharge slip Ex.PW-6/A. PW-7 Dr. Udey Thakur examined the injured after accident and issued MLC Ex.PW-7/A. PW-9 Chaman Lal is a formal witness. PW-10 Pawan Kumar is the photographer. PW-11 Ved Parkash is the Investigating Officer. In cross-examination he has stated that victim was taken to the hospital by the respondent. He has further stated that he is not aware from which side the victim was coming.

8. It has come in the evidence that respondent turned towards Rajgarh road only when traffic constable gave the signal. It is not the case of the prosecution that without caring the traffic signal

and waiting clearance from the traffic constable the respondent turned towards Rajgarh road and in that process he hit Ujwal Jyoti. On the contrary the respondent only after getting clearance from the traffic constable turned towards Rajgarh road, meaning thereby he was following the instructions/directions of the traffic constable and not driving the motorcycle in rash and negligent manner. PW-3 Ujwal Jyoti has stated that one Manoj was with him in addition to other children when he was hit by the motorcycle. Manoj was most material witness but for the reasons best known to the prosecution he has not been examined. The police examined Ujwal Jyoti after 5 days of the accident and therefore, his testimony is to be considered with extra caution. The defence of the respondent is that many children were coming from the school after closing of the school and the boys were running and in that process Ujwal Jyoti struck against the motorcycle. The possibility of the accident in the manner projected by the defence is not ruled out. The prosecution has failed to prove rash and negligent driving on the part of the respondent and causing accident in that process and has further failed to prove the case against respondent beyond reasonable doubt. The learned Addl. Chief Judicial Magistrate after due appreciation of the evidence has acquitted the respondent which requires no interference. Hence appeal is dismissed.

(Kuldip Singh)
Judge.

October 11, 2007
(sks)